

MR. SQUIRES: Thank you, Chairman Nober. Good afternoon, Chairman Nober, Commissioner Morgan. My name is James Squires. I am senior general counsel for Norfolk Southern Corporation. I am responsible for overseeing economic regulatory matters for NS, including rate proceedings before this agency.

Norfolk Southern endorses AAR's filing in this proceeding. And we appreciate the opportunity to make a few additional modest suggestions for expediting rate cases before you.

I would like to begin by expressing our support for the Board's mediation proposal. We view that proposal as a means to extend commercial negotiations, rather than as a precursor to litigation or as a part of litigation.

We certainly support the requirement, which I believe has been aired for the first time during this proceeding, that a senior business person be present at the mediation with authority to settle the cases. We think that would have a very salutary effect on the course of the mediation. And we would fully support that.

I would like to make a few general observations now on behalf of NS about the burden of discovery in rate cases. Discovery has, in fact, been extremely burdensome for Norfolk Southern. It is perhaps unavoidable that the railroads will shoulder a larger burden of discovery in rate cases. I think that is the nature of the case.

But at present, there is very little incentive for complainants to moderate their discovery demands. There is very little counterbalance for the tendency to serve overbroad and far-reaching discovery requests.

In recent cases, we have been served with over 500 separate discovery requests. After what I have heard this morning, I feel like I should say only 500 discovery requests, but, believe me, that has been plenty burdensome and difficult for us to deal with.

These requests have targeted virtually every facet of our operations: marketing, information technology, administration, marketing, et cetera. I would like to make the point that we keep our records and otherwise organize ourselves for business purposes, not for litigation purposes.

And so the burden of discovery is quite intrusive, particularly in the IT area. We have spent hundreds of thousands of dollars we estimate complying with discovery requests and packaging our responses in the manner sought by complainants.

Because of our experience in discovery, we strongly support the Board's proposed modification or modulation of discovery standards. We think that the clear demonstrable need standard and the not readily available from other sources standard would produce great efficiency benefits in the discovery process.

We would also like to suggest that cost sharing is something the Board might consider with respect to certain types of discovery.

I would like to turn for just a minute now to the highly confidential designation issue and to echo some of the things you have heard from our panel. As the Board well knows, the highly confidential designation was originally designed to safeguard truly proprietary and sensitive business information. The problem is that the designation has been applied to entire documents, as my colleague just pointed out.

Yes, the railroads do generate highly confidential information. Both sides do. It becomes commingled in filings with the Board. That makes it very difficult for people like me and for Norfolk Southern's interested business executives to play a full role in the rate cases. Because of the length of time required to and sometimes the contentiousness involved in redacting documents, there are inevitable delays at critical junctures in the cases when we need to be most engaged with the litigation but are unable to do so because we have not been able

to review the documents.

We would suggest that the Board consider regularizing procedures for redactions, perhaps establishing some standards for redacting documents.

Lastly, I would like to request that the Board reconsider its prohibitions on in-house counsel reviewing highly confidential information. Norfolk Southern recognizes and is aware of the cases in which the Board has declined to allow in-house counsel to review highly confidential documents.

We would submit that circumstances in the rate cases, in particular, may merit reconsideration of that rule. In particular, we have increasingly encountered outside counsel in rate cases representing shippers in commercial negotiations and in rate litigation, the same attorneys.

So to the extent there is a concern about counsel's use of highly confidential information obtained in rate cases in the commercial context, it is a concern that applies both to in-house and outside counsel in rate matters.

Thank you very much. I appreciate the opportunity to address you. And I would be happy to answer any questions.